

BENDAU & BENDAU PLLC

Clifford P. Bendau, II (AZ Bar No. 030204)

Christopher J. Bendau (AZ Bar No. 032981)

P.O. Box 97066

Phoenix, Arizona 85060

Telephone: (480) 382-5176

Fax: (480) 304-3805

Email: cliffordbendau@bendaulaw.comchris@bendaulaw.com*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Eric Smith,

Plaintiff,

v.

Lucky Wishbone #8, Inc., an Arizona Corporation; **Joshua Jacobsen and Jane Doe Jacobsen,** a Married Couple; **Tonie Jacobsen and John Doe Jacobsen,** a Married Couple; and **Arnie Jacobsen and Jane Doe Jacobsen II,** a Married Couple,

Defendant.

No. _____

VERIFIED COMPLAINT

Plaintiff, Eric Smith ("Plaintiff"), sues Defendants, Lucky Wishbone #8, Inc.;

Joshua Jacobsen and Jane Doe Jacobsen; Tonie Jacobsen and John Doe Jacobsen; and

Arnie Jacobsen and Jane Doe Jacobsen (collectively, "Defendants"), and alleges as

follows:

PRELIMINARY STATEMENT

1. This is an action for unpaid wages, liquidated damages, attorneys' fees, costs, and interest under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et

1 seq.; the Arizona Minimum Wage Act (“AMWA”), Arizona Revised Statutes (“A.R.S.”)
2 23-362, et seq.; and the Arizona Wage Act (“AWA”), A.R.S. Title 23, Chapter 8.

3 2. The FLSA was enacted “to protect all covered workers from substandard
4 wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S.
5 728, 739 (1981). Under the FLSA, employers must pay all non-exempt employees a
6 minimum wage of pay for all time spent working during their regular 40-hour
7 workweeks. See 29 U.S.C. § 206(a).

8
9 3. The AMWA, A.R.S § 23-363, et seq., establishes a minimum wage within
10 the State of Arizona.

11
12 4. The AWA, A.R.S § 23-350, et seq., establishes the law regarding the
13 payment of wages within the State of Arizona.

14 JURISDICTION AND VENUE

15
16 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
17 29 U.S.C. § 201, *et seq.* because this civil action arises under the Constitution and law of
18 the United States. This Court also has subject matter jurisdiction pursuant 28 U.S.C. §
19 1367 because the state law claims asserted herein are so related to claims in this action
20 over which this Court has subject matter jurisdiction that they form part of the same case
21 or controversy under Article III of the United States Constitution.

22
23 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because
24 acts giving rise to the claims of Plaintiff occurred within the District of Arizona, and
25 Defendants regularly conduct business in and have engaged in the wrongful conduct
26 alleged herein – and, thus, are subject to personal jurisdiction in – this judicial district.
27

PARTIES

7. At all material times, Plaintiff is an individual residing in Pima County, Arizona, and is a former employee of Defendants.

8. At all material times, Defendant Lucky Wishbone #8, Inc. was a corporation duly licensed to transact business in the State of Arizona. At all material times, Defendant Lucky Wishbone #8, Inc. does business, has offices, and/or maintains agents for the transaction of its customary business in Pima County, Arizona.

9. Defendant Lucky Wishbone #8, Inc. is an Arizona Corporation, authorized to do business in the State of Arizona and is at all relevant times Plaintiff's employer as defined by 29 U.S.C. § 203(d).

10. Under the FLSA, Defendant Lucky Wishbone #8, Inc. is an employer. The FLSA defines "employer" as any person who acts directly or indirectly in the interest of an employer in relation to an employee. At all relevant times, Defendant Lucky Wishbone #8, Inc. had the authority to hire and fire employees, supervised and controlled work schedules or the conditions of employment, determined the rate and method of payment, and maintained employment records in connection with Plaintiff's employment with Defendants. As a person who acted in the interest of Defendants in relation to the company's employees, Defendant Lucky Wishbone #8, Inc. is subject to liability under the FLSA.

11. Defendant Joshua Jacobsen and Jane Doe Jacobsen are, upon information and belief, husband and wife. They have caused events to take place giving rise to the claims in this Complaint as to which their marital community is fully liable. Joshua

1 Jacobsen and Jane Doe Jacobsen are owners of Defendant Lucky Wishbone #8, Inc. and
2 were at all relevant times Plaintiff's employer as defined by the FLSA, 29 U.S.C. §
3 203(d).

4 12. Under the FLSA, Defendants Joshua Jacobsen and Jane Doe Jacobsen are
5 employers. The FLSA defines "employer" as any individual who acts directly or
6 indirectly in the interest of an employer in relation to an employee. Joshua Jacobsen and
7 Jane Doe Jacobsen are owners of Lucky Wishbone #8, Inc. At all relevant times, they
8 had the authority to hire and fire employees, supervised and controlled work schedules or
9 the conditions of employment, determined the rate and method of payment, and
10 maintained employment records in connection with Plaintiff's employment with
11 Defendants. As persons who acted in the interest of Defendants in relation to the
12 company's employees, Joshua Jacobsen and Jane Doe Jacobsen are subject to individual
13 liability under the FLSA.

14 13. Defendant Tonie Jacobsen and John Doe Jacobsen are, upon information
15 and belief, husband and wife. They have caused events to take place giving rise to the
16 claims in this Complaint as to which their marital community is fully liable. Tonie
17 Jacobsen and John Doe Jacobsen are owners of Defendant Lucky Wishbone #8, Inc. and
18 were at all relevant times Plaintiff's employer as defined by the FLSA, 29 U.S.C. §
19 203(d).

20 14. Under the FLSA, Defendants Tonie Jacobsen and John Doe Jacobsen are
21 employers. The FLSA defines "employer" as any individual who acts directly or
22 indirectly in the interest of an employer in relation to an employee. Tonie Jacobsen and
23

1 John Doe Jacobsen are owners of Defendant Lucky Wishbone #8, Inc. At all relevant
2 times, they had the authority to hire and fire employees, supervised and controlled work
3 schedules or the conditions of employment, determined the rate and method of payment,
4 and maintained employment records in connection with Plaintiff's employment with
5 Defendants. As persons who acted in the interest of Defendants in relation to the
6 company's employees, David Kirksey and Jane Doe Kirksey are subject to individual
7 liability under the FLSA.
8

9 15. Plaintiff is further informed, believes, and therefore alleges that each of the
10 Defendants herein gave consent to, ratified, and authorized the acts of all other
11 Defendants, as alleged herein.
12

13 16. Defendants, and each of them, are sued in both their individual and
14 corporate capacities.
15

16 17. Defendants are jointly and severally liable for the injuries and damages
17 sustained by Plaintiff.

18 18. At all relevant times, Plaintiff was an "employee" of Defendants, Lucky
19 Wishbone #8, Inc.; Joshua Jacobsen and Jane Doe Jacobsen; Tonie Jacobsen and John
20 Doe Jacobsen; and Arnie Jacobsen and Jane Doe Jacobsen as defined by the FLSA, 29
21 U.S.C. § 201, *et seq.*
22

23 19. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
24 Defendants, Lucky Wishbone #8, Inc.; Joshua Jacobsen and Jane Doe Jacobsen; Tonie
25 Jacobsen and John Doe Jacobsen; and Arnie Jacobsen and Jane Doe Jacobsen.
26
27

1 20. At all relevant times, Defendants, Lucky Wishbone #8, Inc.; Joshua
2 Jacobsen and Jane Doe Jacobsen; Tonie Jacobsen and John Doe Jacobsen; and Arnie
3 Jacobsen and Jane Doe Jacobsen were and continue to be “employers” as defined by the
4 FLSA, 29 U.S.C. § 201, *et seq.*

5
6 21. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to
7 Defendants, Lucky Wishbone #8, Inc.; Joshua Jacobsen and Jane Doe Jacobsen; Tonie
8 Jacobsen and John Doe Jacobsen; and Arnie Jacobsen and Jane Doe Jacobsen.

9
10 22. At all relevant times, Plaintiff was an “employee” of Defendants, Lucky
11 Wishbone #8, Inc.; Joshua Jacobsen and Jane Doe Jacobsen; Tonie Jacobsen and John
12 Doe Jacobsen; and Arnie Jacobsen and Jane Doe Jacobsen as defined by the Arizona
13 A.R.S. § 23-350, *et seq.*

14
15 23. At all relevant times, Defendants, Lucky Wishbone #8, Inc.; Joshua
16 Jacobsen and Jane Doe Jacobsen; Tonie Jacobsen and John Doe Jacobsen; and Arnie
17 Jacobsen and Jane Doe Jacobsen were and continue to be “employers” as defined by
18 A.R.S. § 23-350.

19
20 24. At all relevant times, Plaintiff was an “employee” of Defendants, Lucky
21 Wishbone #8, Inc.; Joshua Jacobsen and Jane Doe Jacobsen; Tonie Jacobsen and John
22 Doe Jacobsen; and Arnie Jacobsen and Jane Doe Jacobsen as defined by A.R.S. § 23-362.

23 25. At all relevant times, Defendants, Lucky Wishbone #8, Inc.; Joshua
24 Jacobsen and Jane Doe Jacobsen; Tonie Jacobsen and John Doe Jacobsen; and Arnie
25 Jacobsen and Jane Doe Jacobsen were and continue to be “employers” as defined by
26 A.R.S. § 23-362.
27

1 26. Defendants, Lucky Wishbone #8, Inc.; Joshua Jacobsen and Jane Doe
2 Jacobsen; Tonie Jacobsen and John Doe Jacobsen; and Arnie Jacobsen and Jane Doe
3 Jacobsen individually and/or through an enterprise or agent, directed and exercised
4 control over Plaintiff's work and wages at all relevant times.

5
6 27. Plaintiff, in his work for Defendants Lucky Wishbone #8, Inc.; Joshua
7 Jacobsen and Jane Doe Jacobsen; Tonie Jacobsen and John Doe Jacobsen; and Arnie
8 Jacobsen and Jane Doe Jacobsen, was employed by an enterprise engaged in commerce
9 that had annual gross sales of at least \$500,000.

10
11 28. At all relevant times, Plaintiff, in his work for Defendants Lucky Wishbone
12 #8, Inc.; Joshua Jacobsen and Jane Doe Jacobsen; Tonie Jacobsen and John Doe
13 Jacobsen; and Arnie Jacobsen and Jane Doe Jacobsen, was engaged in commerce or the
14 production of goods for commerce.

15
16 29. At all relevant times, Plaintiff, in his work for Lucky Wishbone #8, Inc.;
17 Joshua Jacobsen and Jane Doe Jacobsen; Tonie Jacobsen and John Doe Jacobsen; and
18 Arnie Jacobsen and Jane Doe Jacobsen, was engaged in interstate commerce.

19 30. Plaintiff, in his work for Defendants Lucky Wishbone #8, Inc.; Joshua
20 Jacobsen and Jane Doe Jacobsen; Tonie Jacobsen and John Doe Jacobsen; and Arnie
21 Jacobsen and Jane Doe Jacobsen, regularly handled goods produced or transported in
22 interstate commerce.

23
24 **NATURE OF THE CLAIM**

25
26 31. Defendants own and/or operate as Lucky Wishbone, an enterprise located
27 in Maricopa County, Arizona.

1 32. Lucky Wishbone #8, Inc. is located at 1465 Silverlake Road Tucson,
2 Arizona 85713.

3 33. Plaintiff was hired by Defendants to work as kitchen staff and worked a
4 single training shift for Defendants in or about March 2021.

5 34. Defendants, in their sole discretion, agreed to pay Plaintiff \$12.25 per hour
6 for all hours he worked.

7 35. Plaintiff worked his first shift for Defendants in or about March 2021 from
8 approximately 8 a.m. through 4:00 p.m.

9 36. After his first 8-hour shift, Plaintiff decided he would no longer be
10 returning to work for Defendants based on his disappointment with the ill-mannered,
11 offensive approach of the kitchen staff.

12 37. Upon asking about being compensated for the time he worked, Defendants
13 blocked Plaintiff's phone number and ceased all communications with him.

14 38. Defendants failed to compensate Plaintiff any wages whatsoever for the
15 hours he spent performing work for Defendants.

16 39. Defendants were required to compensate Plaintiff all wages owed to him
17 within 7 working days or the next regular scheduled pay date, whichever was sooner.

18 40. To date, Defendants have failed to compensate Plaintiff any wages
19 whatsoever for the hours he spent performing work for Defendants.

20 41. As a result of Defendants' having willfully and improperly refused to pay
21 Plaintiff any wages whatsoever for the hours he spent working for Defendants,
22 Defendants failed to pay the applicable minimum wage to Plaintiff.
23
24
25
26
27

1 42. As a result of Defendants' having willfully and improperly refused to pay
2 Plaintiff any wages whatsoever for the hours he spent working for Defendants,
3 Defendants violated 29 U.S.C. § 206(a).

4 43. As a result of Defendants' having willfully and improperly refused to pay
5 Plaintiff any wages whatsoever for the hours he spent working for Defendants,
6 Defendants have violated the AMWA, A.R.S. § 23-363.

7 44. Defendants have and continue to violate the FLSA by not paying Plaintiff
8 the full applicable minimum wage for all hours worked for Defendants.
9

10 45. Defendant have and continue to violate the AMWA by not paying Plaintiff
11 the full applicable minimum wage for all hours worked for Defendants.
12

13 46. Defendant have and continue to violate the AWA by not paying Plaintiff
14 wages owed for all hours worked for Defendants.
15

16 47. Plaintiff is a covered employee within the meaning of the FLSA.

17 48. Plaintiff is a covered employee within the meaning of the AMWA.

18 49. Plaintiff is a covered employee within the meaning of the AWA.

19 50. Plaintiff was a non-exempt employee.
20

21 51. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
22 of his rights under the FLSA.

23 52. Defendants individually and/or through an enterprise or agent, directed and
24 exercised control over Plaintiff's work and wages at all relevant times.
25

26 53. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
27 from Defendants compensation for unpaid wages, an additional amount equal amount as

1 liquidated damages, interest, and reasonable attorney's fees and costs of this action under
2 29 U.S.C. § 216(b).

3 54. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
4 from Defendants compensation for unpaid minimum wages, an additional amount equal
5 to twice the unpaid wages as liquidated damages, interest, and reasonable attorney's fees
6 and costs of this action under A.R.S. § 23-363.

7
8 55. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
9 from Defendants compensation for his unpaid wages at an hourly rate, to be proven at
10 trial, in an amount that is treble the amount of his unpaid wages, plus interest thereon,
11 and his costs incurred under A.R.S. § 23-355.

12
13 **COUNT ONE: FAIR LABOR STANDARDS ACT**
14 **FAILURE TO PAY MINIMUM WAGE**

15 56. Plaintiff realleges and incorporates by reference all allegations in all
16 preceding paragraphs.

17 57. Defendants willfully and improperly refused to pay Plaintiff any wages
18 whatsoever for the hours he spent working for Defendants.

19 58. As a result, Defendants failed to pay the applicable minimum wage to
20 Plaintiff.

21 59. Defendants' practice of willfully and improperly refusing to pay Plaintiff
22 his paycheck for work he performed violated the FLSA, 29 U.S.C. § 206(a).
23
24
25
26
27

1 60. Plaintiff is therefore entitled to compensation for the full applicable
2 minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as
3 liquidated damages, together with interest, reasonable attorney's fees, and costs.

4 **WHEREFORE**, Plaintiff, Eric Smith, respectfully requests that this Court grant
5 the following relief in Plaintiff's favor, and against Defendants:
6

7 A. For the Court to declare and find that the Defendant committed one of more
8 of the following acts:

9 i. Violated minimum wage provisions of the FLSA, 29 U.S.C. §
10 206(a), by failing to pay proper minimum wages;

11 ii. Willfully violated minimum wage provisions of the FLSA, 29
12 U.S.C. § 206(a) by willfully failing to pay proper minimum wages;

13 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
14 determined at trial;

15 C. For the Court to award compensatory damages, including liquidated
16 damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;

17 D. For the Court to award prejudgment and post-judgment interest;

18 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
19 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
20 forth herein;

21 F. Such other relief as this Court shall deem just and proper.
22
23
24
25
26
27

COUNT TWO: ARIZONA MINIMUM WAGE ACT
FAILURE TO PAY MINIMUM WAGE

61. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

62. Defendants willfully and improperly refused to pay Plaintiff any wages whatsoever for the hours he worked for Defendants.

63. As a result, Defendants failed to pay the applicable minimum wage to Plaintiff.

64. Defendants' practice of willfully failing or refusing to pay Plaintiff at the required minimum wage rate violates the AMWA, A.R.S. § 23-363.

65. Plaintiff is therefore entitled to compensation for the full applicable minimum wage at an hourly rate, to be proven at trial, plus an additional amount equal to twice the unpaid wages as liquidated damages, together with interest, reasonable attorney's fees, and costs.

WHEREFORE, Plaintiff, Eric Smith, respectfully requests that this Court grant the following relief in Plaintiff's favor, and against Defendants:

- A. For the Court to declare and find that the Defendants committed one of more of the following acts:
- i. Violated minimum wage provisions of the AMWA, A.R.S. § 23-363, by failing to pay proper minimum wages;
 - ii. Willfully violated minimum wage provisions of the AMWA, A.R.S. § 23-363 by willfully failing to pay proper minimum wages;

- 1 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
2 determined at trial;
- 3 C. For the Court to award compensatory damages, including liquidated
4 damages pursuant to A.R.S. § 23-364, to be determined at trial;
- 5 D. For the Court to award prejudgment and post-judgment interest;
- 6 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
7 action pursuant to A.R.S. § 23-364 and all other causes of action set forth
8 herein;
- 9 F. Such other relief as this Court shall deem just and proper.

10
11
12 **COUNT THREE: ARIZONA WAGE ACT**
13 **FAILURE TO PAY WAGES OWED**

14 66. Plaintiff realleges and incorporates by reference all allegations in all
15 preceding paragraphs.

16 67. Defendants willfully failed or refused to pay Plaintiff any wages
17 whatsoever for the hours he spent working for Defendants.

18 68. Defendant's practice of willfully failing to pay Plaintiff wages for labor
19 performed violates the AWA, A.R.S. § 23-351.

20 69. Plaintiff is therefore entitled to compensation for all applicable wages at an
21 hourly rate, to be proven at trial, in an amount treble the unpaid wages, together with
22 interest, and costs of this action.

23
24
25 **WHEREFORE**, Plaintiff, Eric Smith, individually, respectfully requests that this
26 Court grant the following relief in Plaintiff's favor, and against Defendants:
27

- 1 A. For the Court to declare and find that the Defendants violated A.R.S. Title
2 23, Chapter 2, by failing to pay wages owed to Plaintiff;
3 B. For the Court to award compensatory damages, including treble the amount
4 of wages owed to Plaintiffs, pursuant to A.R.S. § 23-355, to be determined
5 at trial;
6 C. For the Court to award prejudgment and post-judgment interest;
7 D. For the Court to award Plaintiff reasonable attorneys' fees and costs;
8 E. Such other relief as this Court shall deem just and proper.
9
10
11
12

13 **JURY TRIAL DEMAND**

14 Plaintiff hereby demands a trial by jury on all issues so triable.
15

16 RESPECTFULLY SUBMITTED this 6th Day of January, 2022.
17

18 BENDAU & BENDAU PLLC

19 By: /s/ Clifford P. Bendau, II

20 Clifford P. Bendau, II

21 Christopher J. Bendau


22 *Attorney for Plaintiff*
23
24
25
26
27

BENDAU & BENDAU PLLC

P.O. Box 97066
Phoenix, AZ 85060

VERIFICATION

Plaintiff, Eric Smith, declares under penalty of perjury that he has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on his personal knowledge, except as to those matters stated upon information and believe, and, as to those matters, he believes them to be true.

DocuSigned by:

C992B3F130GF486...
Eric Smith

BENDAU & BENDAU PLLC
P.O. Box 97066
Phoenix, AZ 85060